

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 1:22-cv-20726-DPG

FERNANDO RIVERA,

Plaintiff,

v.

**MASTEC SERVICES COMPANY, INC. and
DECISIVE COMMUNICATIONS, INC.,**

Defendants.

ORDER AFFIRMING AND ADOPTING REPORT OF MAGISTRATE JUDGE

THIS CAUSE comes before the Court on Chief Magistrate Judge Edwin G. Torres' Order Approving FLSA Settlement, Order Dismissing Action with Prejudice, and Report and Recommendation to Vacate Order ("Order and Report"). [ECF No. 55]. On May 12, 2023, this Court entered its Order directing the Clerk to enter judgment in favor of Plaintiff Fernando Rivera and against Defendant MasTec Services Company, Inc. in the amount of Fourteen Thousand Five Hundred Dollars and Zero Cents (\$14,500.00), representing \$7,250.00 in alleged unpaid overtime wages plus an equal amount of \$7,250.00 in alleged liquidated damages ("May 12, 2023 Order and Judgment"). [ECF No. 45]. On July 18, 2023, the Parties and previously named defendant, Decisive Communications, Inc., filed a Joint Notice of Settlement. [ECF No. 47]. On July 18, 2023, the Parties filed their Consent to Magistrate Jurisdiction, including the approval of the Parties' settlement as well as an Order vacating this Court's May 12, 2023 Order and Judgment. [ECF No. 46]. On August 31, 2023, the Parties filed a Joint Motion for Fairness Hearing to allow the Parties to fully and completely address inquiries pursuant to *Lynns Food Stores, Inc. v. United*

States Department of Labor, 679 F.2d 1350, 1353 (11th Cir. 1982) as well as the prior request to vacate the May 12, 2023 Order and Judgment. [ECF No. 49]. The case was referred to Judge Torres for all further proceedings, including settlement approval, and a report and recommendation on any motion to vacate this Court's May 12, 2023 Order and Judgment in favor of Plaintiff Fernando Rivera. [ECF No. 48]. Judge Torres' Order and Report approved the settlement agreement and recommends that this Court exercise its discretion under Rule 60 to vacate the May 12, 2023 Order and Judgment. The Parties have waived their objection periods for purposes of the Report and Recommendation and request that this Court approve the Report. [ECF No. 55].

A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objection is made are accorded *de novo* review if those objections "pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see also* Fed. R. Civ. P. 72(b)(3). Any portions of the report and recommendation to which *no* specific objection is made are reviewed only for clear error. *Liberty Am. Ins. Grp., Inc. v. WestPoint Underwriters, L.L.C.*, 199 F. Supp. 2d 1271, 1276 (M.D. Fla. 2001); *accord Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).

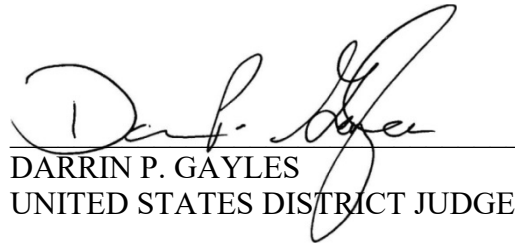
This Court finds no clear error with Judge Torres' well-reasoned analysis and agrees that the May 12, 2023 Order and Judgment, [ECF No. 45], must be vacated.

Accordingly, after careful consideration, it is **ORDERED AND ADJUDGED** as follows:

- (1) Judge Torres' Report and Recommendation, [ECF No. 55], is **AFFIRMED AND ADOPTED** and incorporated into this Order by reference; and
- (2) Good cause exists to vacate this Court's May 12, 2023 Order and Judgment. The settlement agreement provides further tangible benefit to the Parties because it

includes all claims against Defendants MasTec Services Company, Inc. *and* Decisive Communications, Inc. Additionally, the settlement agreement allows for additional sums and considerations not included in the May 12, 2023 Order and Judgment. Thus, the May 12, 2023 Order and Judgment, [ECF No. 45], is **VACATED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of September, 2023.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE